

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO SUMMARY ORDERS FILED AFTER JANUARY 1, 2007 IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 32.1 AND FEDERAL RULE OF APPELLATE PROCEDURE 32.1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION: "(SUMMARY ORDER)." A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF THAT SUMMARY ORDER TOGETHER WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED ON ANY PARTY NOT REPRESENTED BY COUNSEL UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE WITHOUT PAYMENT OF FEE (SUCH AS THE DATABASE AVAILABLE AT [HTTP://WWW.CA2.USCOURTS.GOV/](http://www.ca2.uscourts.gov/)). IF NO COPY IS SERVED BY REASON OF THE AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE CITATION MUST INCLUDE REFERENCE TO THAT DATABASE AND THE DOCKET NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.

At a stated term of the United States Court of Appeals
for the Second Circuit, held at the Daniel Patrick Moynihan
United States Courthouse, 500 Pearl Street, in the City of
New York, on the 24th day of March, two thousand eight.

PRESENT:

HON. JOSEPH M. McLAUGHLIN,
HON. ROSEMARY S. POOLER,
HON. BARRINGTON D. PARKER,
Circuit Judges.

YU LIU,
Petitioner,

v.

BOARD OF IMMIGRATION APPEALS,
Respondent.

07-2986-ag
NAC

FOR PETITIONER: John Z. Zhang, New York, New York.

1 **FOR RESPONDENT:** **Jeffrey S. Bucholtz, Acting**
2 **Assistant Attorney General, Francis**
3 **W. Fraser, Senior Litigation**
4 **Counsel, Kate D. Balaban, Staff**
5 **Attorney, United States Department**
6 **of Justice, Civil Division, Office**
7 **of Immigration Litigation,**
8 **Washington, District of Columbia.**
9

10 UPON DUE CONSIDERATION of this petition for review of a
11 decision of the Board of Immigration Appeals ("BIA"), it is
12 hereby ORDERED, ADJUDGED, AND DECREED, that the petition for
13 review is DENIED.

14 Petitioner Yu Liu, a native and citizen of the People's
15 Republic of China, seeks review of the June 13, 2007 order
16 of the BIA affirming the March 12, 2003 decision of
17 Immigration Judge ("IJ") John Opaciuch, denying his
18 application for asylum, withholding of removal, and relief
19 under the Convention Against Torture ("CAT"). *In re Yu Liu*,
20 No. A78 746 874 (B.I.A. June 13, 2007), *aff'g* No. A78 746
21 874 (Immig. Ct. N.Y. City Mar. 12, 2003). We assume the
22 parties' familiarity with the underlying facts and
23 procedural history of the case.

24 When the BIA affirms the decision of the IJ and
25 supplements the IJ's decision, we review the decision of the
26 IJ as supplemented by the BIA. *See Yan Chen v. Gonzales*,
27 417 F.3d 268, 271 (2d Cir. 2005). We review *de novo*

1 questions of law and the application of law to undisputed
2 fact. See *Secaida-Rosales v. INS*, 331 F.3d 297, 307 (2d
3 Cir. 2003). We review the agency's factual findings,
4 including adverse credibility determinations, under the
5 substantial evidence standard. 8 U.S.C. § 1252(b)(4)(B);
6 *Dong Gao v. BIA*, 482 F.3d 122, 126 (2d Cir. 2007).

7 As a preliminary matter, because Liu failed to
8 challenge the agency's denial of his CAT claim before this
9 Court, we deem any such arguments waived. See *Yueqing Zhang*
10 *v. Gonzales*, 426 F.3d 540, 545 n.7 (2d Cir. 2005).

11 We find it unnecessary to review the agency's adverse
12 credibility determination because we agree with its
13 conclusion that, even if credible, Liu failed to carry his
14 burden of proof as to asylum and withholding of removal. An
15 alien may establish eligibility for asylum by demonstrating
16 past persecution based on his or her own "resistance" to a
17 coercive population control program or a well-founded fear
18 that he or she will be subjected to persecution for such
19 resistance. See *Shi Liang Lin v. U.S. Dep't of Justice*, 494
20 F.3d 296, 312-13 (2d Cir. 2007) (en banc) (citing 8 U.S.C.
21 § 1101(a)(42)). The BIA has found that "the term
22 'resistance' covers a wide range of circumstances, including
23 expressions of general opposition, attempts to interfere

1 with enforcement of government policy in particular cases,
2 and other overt forms of resistance to the requirements of
3 the family planning law." *In re S-L-L-*, 24 I & N Dec. 1, 10
4 (BIA 2006) (en banc) (emphasis added) (*quoted in Shi Liang*
5 *Lin*, 494 F.3d at 313).

6 We find no error in the BIA's conclusion that Liu
7 failed to demonstrate "resistance" to China's family
8 planning policy. We note that Liu does not challenge the
9 BIA's definition of the term "resistance," only its
10 application of the law to the facts of his case. The
11 conclusory arguments contained in his brief do not
12 sufficiently explain how his actions could be considered
13 "resistance" under 8 U.S.C. § 1101(a)(42). Accordingly, the
14 agency properly denied his asylum application.¹

15 Because Liu was unable to show the objective likelihood
16 of persecution needed to make out an asylum claim, he was
17 necessarily unable to meet the higher standard required to
18 succeed on a claim for withholding of removal. See *Paul v.*
19 *Gonzales*, 444 F.3d 148, 155 (2d Cir. 2006).

20 Finally, the brief submitted on Yu's behalf by John Z.

¹ While Liu testified that he feared sterilization if returned to China, he failed to raise this assertion in his brief to the BIA on remand or in his brief to this Court. Accordingly, we deem any such argument abandoned. See *Yueqing Zhang*, 426 F.3d at 545 n.7.

1 Zhang fails to comply with the Federal Rules of Appellate
2 Procedure and is otherwise of poor quality. Among other
3 deficiencies, the brief cites, as the basis of this Court's
4 jurisdiction, a statute that says nothing about
5 jurisdiction; includes a summary of the argument that merely
6 states the issues presented; fails to note any standard of
7 review; does not even mention the BIA's decision in this
8 case; includes nearly no citations to legal authority; fails
9 to discuss *Shi Liang Lin* or the "resistance" issue in any
10 coherent fashion; and is riddled with grammatical errors.
11 *Cf. Fed. R. App. P. 28(a).*

12 _____This is at least the fifth time that Zhang has
13 submitted such inadequate briefing to this Court. *See Rui*
14 *Rong Ni v. BIA*, 214 F. App'x 96, 98 n.1 (2d Cir. 2007); *Jin*
15 *Bao Jiang v. Gonzales*, 187 F. App'x 56, 57 (2d Cir. 2006);
16 *Yun Shou Xie v. BIA*, 186 F. App'x 88, 91 (2d Cir. 2006);
17 *Chun Yan Gao v. BIA*, 161 F. App'x 87, 88 (2d Cir. 2005). On
18 the previous four occasions, the Court warned Zhang that
19 subsequent failure to comply with the Federal Rules of
20 Appellate Procedure could subject him to discipline. He has
21 therefore had sufficient warning. The Court hereby refers
22 the matter to the Court's Grievance Panel to take whatever

1 measures it deems appropriate.

2 For the foregoing reasons, the petition for review is
3 DENIED. The pending motion for a stay of removal in this
4 petition is DISMISSED as moot.

5 FOR THE COURT:
6 Catherine O'Hagan Wolfe, Clerk

7
8 By: _____